Combatant Status Review Tribunal, a process where detainees may challenge their status designations.

Congress passed and the President signed the Detainee Treatment Act on December 30, 2005, which included the Graham-Levin amendment to eliminate the Federal court statutory jurisdiction over habeas corpus claims by aliens detained at Guantanamo Bay.

After a full and open debate, a bipartisan majority of Congress passed the Military Commissions Act just last fall. The MCA amended the Detainee Treatment Act provisions regarding appellate review and habeas corpus jurisdictions by making the provisions of the DTA the exclusive remedy for all aliens detained as enemy combatants anywhere in the world, including those detained at Guantanamo Bay, Cuba. The MCA's restrictions on habeas corpus codified important and constitutional limits on captured enemies' access to our courts.

The District of Columbia Circuit upheld the MCA's habeas restrictions in Boumediene v. Bush earlier this year. The Supreme Court, in a rare move, reconsidered their denial of certiorari and will make a decision on this case in the near future. In the meantime, Congress should not act hastily.

Before the Supreme Court decision in Rasul v. Bush in June 2004, the controlling case law for over 50 years was set out in the Supreme Court case of Johnson v. Eisentrager, a 1950 case which held that aliens in military detention outside the United States were not entitled to judicial review through habeas corpus petitions in Federal courts. The Court recognized that extension of habeas corpus to alien combatants captured abroad ''would hamper the war effort and bring aid and comfort to the enemy,'' and the Constitution requires no such thing.

The Rasul case changed the state of the law for detainees held at Guantanamo Bay, Cuba, due to the unique nature of the long-term U.S. lease of that property. The Supreme Court reasoned that the habeas corpus statute and the exercise of complete jurisdiction and control over the Navy base in Cuba were sufficient to establish the jurisdiction of U.S. Federal courts over habeas petitions brought by detainees.

The Supreme Court ruled that the status of a detainee as an enemy combatant must be determined in a way that provides the fundamentals of due process—namely, notice and opportunity to be heard. The executive branch established Combatant Status Review Tribunals, or CSRTs, to comply with this mandate. Judicial review of CSRT determinations of enemy combatant status by article III courts is provided by the Detainee Treatment Act. Under the DTA, appeals of CSRT decisions may be made to the U.S. Court of Appeals for the DC Circuit.

In his dissent in the Rasul case, Justice Scalia wisely pointed out that at the end of World War II, the United States held approximately 2 million enemy soldiers, many of whom no doubt had some complaint about their capture or conditions of confinement. Today, approximately 25,000 persons are detained by the United States in Iraq, Afghanistan, and at Guantanamo Bay.

Restoring jurisdiction over alien enemy combatants could result in providing the right of habeas corpus to all those detainees held outside the United States so long as their place of detention is under the jurisdiction and control of the U.S. Armed Forces.

In fact, habeas challenges on behalf of detainees held in Afghanistan have already been filed.

The Supreme Court recognized in Johnson v. Eisentrager that allowing habeas petitions from enemy combatants forces the judiciary into direct oversight of the conduct of war in which they will be asked to hear petitions from all around the world, challenging actions and events on the battlefield. This would simply be unworkable as a practical matter and could greatly interfere with the Executive's authority to wage war. As the Supreme Court revisits these issues, Congress should not undue what it has done.

Federal courts have ruled twice—in December 2006 at the district court level on the remand of the Hamdan case from the Supreme Court and again in February 2007 at the DC Circuit Court level in the consolidated cases of Boumediene and Al Odah—that the Military Commissions Act is constitutional and that alien enemy unlawful combatants have no constitutional rights to habeas corpus.

The Supreme Court, at the end of June, decided it would hear these cases on expedited appeal this fall. It is appropriate for Congress to allow the Supreme Court to review the decision made by the DC Circuit Court of Appeals, applying the standards of review enacted in the DTA and the MCA before granting habeas rights to and opening the Federal courts to thousands of detainees held outside the United States.

For these reasons, and simply because it represents extremely bad policy, I urge my colleagues to oppose the Leahy-Specter amendment.

Mr. President, I had also intended to talk a little while today about Senator GRAHAM's amendment seeking to strike section 1023 of the underlying bill. It is my understanding now that there are discussions ongoing relative to the possibility of trying to work that amendment out. So if that amendment does come to the floor for consideration, I will be back to talk about the support of that amendment at that time.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MENENDEZ). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business.

The PRESIDING OFFICER. The Senate is now proceeding under a previous order in a period of morning business, with Senators being recognized for up to 10 minutes.

The Senator from Alabama is recognized.

Mr. SESSIONS. I thank the Chair.

DEFENSE AUTHORIZATION AND APPROPRIATIONS

Mr. SESSIONS. Mr. President, I would just say that we have a limited amount of time in this body—and we all know that—before the end of the fiscal year will be coming up on September 30. We have to pass some sort of appropriation to fund our defense and our military by that date. We need to pass the Defense authorization bill, which has been voted out of the Armed Services Committee. Senator LEVIN, our Democratic chairman, has moved that bill forward, and it had strong bipartisan support. It is on the floor today, and it provides quite a number of valuable and critically important benefits for our defense on which we need to vote. For example, it increases the number of persons in the Army, the end-strength of the Army, by 13,000, and 9,000 for the Marine Corps. We have a lot of people talking about the stress on the military, so we need to authorize the growth of the military. It is something we know we need to do, and I think we have a general agreement on that. It is in this bill. We need to move this bill. It authorizes numerous pay bonuses and benefits for our warfighters and their family members. It allows a reservist to draw retirement before age 60 if they volunteer under certain circumstances for active mobilizations. It directs studies on mental health and well-being for soldiers and marines. It establishes a Family Readiness Council. It authorizes funding for the MRAPs, which are those vehicles which are so much more effective against even the most powerful bombs and IED-type attacks.

So this bill, this authorization bill, is not an unimportant matter. Our soldiers are out there now in harm's way, where we sent them, executing the policies we asked them to execute, and we need to support them by doing our job. We complain that Iraq can't pass this bill or that bill; we need to pass our own bill.

Not only do we need to get this authorization bill passed, but we have to get on next week to the appropriations bill to actually fund the military because if we do not do so, the funding stops. Under American law, if Congress does not appropriate funds, nobody can spend funds. It is just that simple.